

111TH CONGRESS  
1ST SESSION

# H. R. 3911

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for qualified individuals for bone mass measurement (bone density testing) to prevent fractures associated with osteoporosis.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 22, 2009

Mrs. MALONEY (for herself and Mrs. CAPITO) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for qualified individuals for bone mass measurement (bone density testing) to prevent fractures associated with osteoporosis.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; FINDINGS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Osteoporosis Early Detection and Prevention Act of  
4 2009”.

5 (b) FINDINGS.—Congress makes the following find-  
6 ings:

7 (1) NATURE OF OSTEOPOROSIS.—

8 (A) Osteoporosis is a disease characterized  
9 by low bone mass and structural deterioration  
10 of bone tissue leading to bone fragility and in-  
11 creased susceptibility to fractures of the hip,  
12 spine, and wrist.

13 (B) Osteoporosis has no symptoms and  
14 typically remains undiagnosed until a fracture  
15 occurs.

16 (C) Once a fracture occurs, the condition  
17 has usually advanced to the stage where the  
18 likelihood is high that another fracture will  
19 occur.

20 (D) There is no cure for osteoporosis, but  
21 drug therapy has been shown to reduce new hip  
22 and spine fractures by 50 percent and other  
23 treatments, such as nutrition therapy, have also  
24 proven effective.

25 (2) INCIDENCE OF OSTEOPOROSIS.—

26 Osteoporosis is a common condition:

1 (A) Of the 44 million Americans who have  
2 (or are at risk for) osteoporosis, 80 percent are  
3 women.

4 (B) Annually there are 1.5 million bone  
5 fractures attributable to osteoporosis.

6 (C) Half of all women, and one-fourth of  
7 all men, age 50 or older will have a bone frac-  
8 ture due to osteoporosis.

9 (3) IMPACT OF OSTEOPOROSIS.—The cost of  
10 treating osteoporosis is significant:

11 (A) The annual cost of osteoporosis in the  
12 United States was \$17 billion in 2001.

13 (B) The average cost in the United States  
14 of repairing a hip fracture due to osteoporosis  
15 is \$37,000, while the average cost of an  
16 osteoporosis screening test ranges from \$59 to  
17 \$300.

18 (C) Fractures due to osteoporosis fre-  
19 quently result in disability and institutionaliza-  
20 tion of individuals.

21 (D) Because osteoporosis is a progressive  
22 condition causing fractures primarily in aging  
23 individuals, preventing fractures particularly in  
24 post menopausal women before they become eli-  
25 gible for Medicare, has a significant potential of

1 reducing osteoporosis-related costs under the  
2 Medicare program.

3 (4) USE OF BONE MASS MEASUREMENT.—

4 (A) Bone mass measurement is a non-  
5 invasive, painless, and reliable way to diagnose  
6 osteoporosis before costly fractures occur.

7 (B) Low bone mass is as predictive of fu-  
8 ture fractures as is high cholesterol or high  
9 blood pressure of heart disease or stroke.

10 (C) Bone mass measurement is the only  
11 reliable method of detecting osteoporosis at an  
12 early stage.

13 (D) Under section 4106 of the Balanced  
14 Budget Act of 1997, Medicare provides cov-  
15 erage, effective July 1, 1998, for bone mass  
16 measurement for qualified individuals who are  
17 at risk of developing osteoporosis.

18 **SEC. 2. REQUIRING COVERAGE OF BONE MASS MEASURE-**  
19 **MENT UNDER HEALTH PLANS.**

20 (a) GROUP HEALTH PLANS.—

21 (1) PUBLIC HEALTH SERVICE ACT AMEND-  
22 MENTS.—(A) Subpart 2 of part A of title XXVII of  
23 the Public Health Service Act is amended by adding  
24 at the end the following new section:

1 **“SEC. 2708. STANDARDS RELATING TO BENEFITS FOR BONE**  
2 **MASS MEASUREMENT.**

3 “(a) REQUIREMENTS FOR COVERAGE OF BONE MASS  
4 MEASUREMENT.—A group health plan, and a health in-  
5 surance issuer offering group health insurance coverage,  
6 shall include (consistent with this section) coverage for  
7 bone mass measurement for beneficiaries and participants  
8 who are qualified individuals.

9 “(b) DEFINITIONS RELATING TO COVERAGE.—In  
10 this section:

11 “(1) BONE MASS MEASUREMENT.—The term  
12 ‘bone mass measurement’ means a radiologic or  
13 radioisotopic procedure or other procedure approved  
14 by the Food and Drug Administration performed on  
15 an individual for the purpose of identifying bone  
16 mass or detecting bone loss or determining bone  
17 quality, and includes a physician’s interpretation of  
18 the results of the procedure. Nothing in this para-  
19 graph shall be construed as requiring a bone mass  
20 measurement to be conducted in a particular type of  
21 facility or to prevent such a measurement from  
22 being conducted through the use of mobile facilities  
23 that are otherwise qualified.

24 “(2) QUALIFIED INDIVIDUAL.—The term ‘quali-  
25 fied individual’ means an individual who—

1           “(A) is at clinical risk for osteoporosis, in-  
2           cluding an estrogen-deficient woman;

3           “(B) has vertebral abnormalities;

4           “(C) is receiving chemotherapy or long-  
5           term glucocorticoid (steroid) therapy;

6           “(D) has primary hyperparathyroidism,  
7           hyperthyroidism, or excess thyroid replacement;  
8           or

9           “(E) is being monitored to assess the re-  
10          sponse to or efficacy of approved osteoporosis  
11          drug therapy.

12       “(c) LIMITATION ON FREQUENCY REQUIRED.—Tak-  
13       ing into account the standards established under section  
14       1861(rr)(3) of the Social Security Act, the Secretary shall  
15       establish standards regarding the frequency with which a  
16       qualified individual shall be eligible to be provided benefits  
17       for bone mass measurement under this section. The Sec-  
18       retary may vary such standards based on the clinical and  
19       risk-related characteristics of qualified individuals.

20       “(d) RESTRICTIONS ON COST-SHARING.—

21           “(1) IN GENERAL.—Subject to paragraph (2),  
22       nothing in this section shall be construed as pre-  
23       venting a group health plan or issuer from imposing  
24       deductibles, coinsurance, or other cost-sharing in re-  
25       lation to bone mass measurement under the plan (or

1 health insurance coverage offered in connection with  
2 a plan).

3 “(2) LIMITATION.—Deductibles, coinsurance,  
4 and other cost-sharing or other limitations for bone  
5 mass measurement may not be imposed under para-  
6 graph (1) to the extent they exceed the deductibles,  
7 coinsurance, and limitations that are applied to simi-  
8 lar services under the group health plan or health  
9 insurance coverage.

10 “(e) PROHIBITIONS.—A group health plan, and a  
11 health insurance issuer offering group health insurance  
12 coverage in connection with a group health plan, may  
13 not—

14 “(1) deny to an individual eligibility, or contin-  
15 ued eligibility, to enroll or to renew coverage under  
16 the terms of the plan, solely for the purpose of  
17 avoiding the requirements of this section;

18 “(2) provide incentives (monetary or otherwise)  
19 to individuals to encourage such individuals not to  
20 be provided bone mass measurements to which they  
21 are entitled under this section or to providers to in-  
22 duce such providers not to provide such measure-  
23 ments to qualified individuals;

1           “(3) prohibit a provider from discussing with a  
2           patient osteoporosis preventive techniques or medical  
3           treatment options relating to this section; or

4           “(4) penalize or otherwise reduce or limit the  
5           reimbursement of a provider because such provider  
6           provided bone mass measurements to a qualified in-  
7           dividual in accordance with this section.

8           “(f) RULE OF CONSTRUCTION.—Nothing in this sec-  
9           tion shall be construed to require an individual who is a  
10          participant or beneficiary to undergo bone mass measure-  
11          ment.

12          “(g) NOTICE.—A group health plan under this part  
13          shall comply with the notice requirement under section  
14          714(g) of the Employee Retirement Income Security Act  
15          of 1974 with respect to the requirements of this section  
16          as if such section applied to such plan.

17          “(h) LEVEL AND TYPE OF REIMBURSEMENTS.—  
18          Nothing in this section shall be construed to prevent a  
19          group health plan or a health insurance issuer offering  
20          group health insurance coverage from negotiating the level  
21          and type of reimbursement with a provider for care pro-  
22          vided in accordance with this section.

23          “(i) PREEMPTION.—

24                 “(1) IN GENERAL.—The provisions of this sec-  
25          tion do not preempt State law relating to health in-



1       surance coverage to the extent such State law pro-  
 2       vides greater benefits with respect to osteoporosis  
 3       detection or prevention.

4               “(2) CONSTRUCTION.—Section 2723(a)(1) shall  
 5       not be construed as superseding a State law de-  
 6       scribed in paragraph (1).”.

7               (B) Section 2723(c) of such Act (42 U.S.C.  
 8       300gg–23(c)) is amended by striking “section 2704”  
 9       and inserting “sections 2704 and 2708”.

10              (2) ERISA AMENDMENTS.—(A) Subpart B of  
 11       part 7 of subtitle B of title I of the Employee Re-  
 12       tirement Income Security Act of 1974 is amended by  
 13       adding at the end the following new section:

14   **“SEC. 715. STANDARDS RELATING TO BENEFITS FOR BONE**  
 15       **MASS MEASUREMENT.**

16       “(a) REQUIREMENTS FOR COVERAGE OF BONE MASS  
 17       MEASUREMENT.—A group health plan, and a health in-  
 18       surance issuer offering group health insurance coverage,  
 19       shall include (consistent with this section) coverage for  
 20       bone mass measurement for beneficiaries and participants  
 21       who are qualified individuals.

22       “(b) DEFINITIONS RELATING TO COVERAGE.—In  
 23       this section:

24              “(1) BONE MASS MEASUREMENT.—The term  
 25       ‘bone mass measurement’ means a radiologic or

1       radioisotopic procedure or other procedure approved  
2       by the Food and Drug Administration performed on  
3       an individual for the purpose of identifying bone  
4       mass or detecting bone loss or determining bone  
5       quality, and includes a physician’s interpretation of  
6       the results of the procedure. Nothing in this para-  
7       graph shall be construed as requiring a bone mass  
8       measurement to be conducted in a particular type of  
9       facility or to prevent such a measurement from  
10      being conducted through the use of mobile facilities  
11      that are otherwise qualified.

12               “(2) QUALIFIED INDIVIDUAL.—The term ‘quali-  
13      fied individual’ means an individual who—

14                       “(A) is at clinical risk for osteoporosis, in-  
15                       cluding an estrogen-deficient woman;

16                       “(B) has vertebral abnormalities;

17                       “(C) is receiving chemotherapy or long-  
18                       term glucocorticoid (steroid) therapy;

19                       “(D) has primary hyperparathyroidism,  
20                       hyperthyroidism, or excess thyroid replacement;  
21                       or

22                       “(E) is being monitored to assess the re-  
23                       sponse to or efficacy of approved osteoporosis  
24                       drug therapy.

1       “(c) LIMITATION ON FREQUENCY REQUIRED.—The  
2 standards established under section 2708(c) of the Public  
3 Health Service Act shall apply to benefits provided under  
4 this section in the same manner as they apply to benefits  
5 provided under section 2708 of such Act.

6       “(d) RESTRICTIONS ON COST-SHARING.—

7               “(1) IN GENERAL.—Subject to paragraph (2),  
8 nothing in this section shall be construed as pre-  
9 venting a group health plan or issuer from imposing  
10 deductibles, coinsurance, or other cost-sharing in re-  
11 lation to bone mass measurement under the plan (or  
12 health insurance coverage offered in connection with  
13 a plan).

14              “(2) LIMITATION.—Deductibles, coinsurance,  
15 and other cost-sharing or other limitations for bone  
16 mass measurement may not be imposed under para-  
17 graph (1) to the extent they exceed the deductibles,  
18 coinsurance, and limitations that are applied to simi-  
19 lar services under the group health plan or health  
20 insurance coverage.

21       “(e) PROHIBITIONS.—A group health plan, and a  
22 health insurance issuer offering group health insurance  
23 coverage in connection with a group health plan, may  
24 not—

1           “(1) deny to an individual eligibility, or contin-  
2           ued eligibility, to enroll or to renew coverage under  
3           the terms of the plan, solely for the purpose of  
4           avoiding the requirements of this section;

5           “(2) provide incentives (monetary or otherwise)  
6           to individuals to encourage such individuals not to  
7           be provided bone mass measurements to which they  
8           are entitled under this section or to providers to in-  
9           duce such providers not to provide such measure-  
10          ments to qualified individuals;

11          “(3) prohibit a provider from discussing with a  
12          patient osteoporosis preventive techniques or medical  
13          treatment options relating to this section; or

14          “(4) penalize or otherwise reduce or limit the  
15          reimbursement of a provider because such provider  
16          provided bone mass measurements to a qualified in-  
17          dividual in accordance with this section.

18          “(f) RULE OF CONSTRUCTION.—Nothing in this sec-  
19          tion shall be construed to require an individual who is a  
20          participant or beneficiary to undergo bone mass measure-  
21          ment.

22          “(g) NOTICE UNDER GROUP HEALTH PLAN.—The  
23          imposition of the requirements of this section shall be  
24          treated as a material modification in the terms of the plan  
25          described in section 102(a), for purposes of assuring no-

1 tice of such requirements under the plan; except that the  
 2 summary description required to be provided under the  
 3 fourth sentence of section 104(b)(1) with respect to such  
 4 modification shall be provided by not later than 60 days  
 5 after the first day of the first plan year in which such  
 6 requirements apply.

7 “(h) PREEMPTION.—

8 “(1) IN GENERAL.—The provisions of this sec-  
 9 tion do not preempt State law relating to health in-  
 10 surance coverage to the extent such State law pro-  
 11 vides greater benefits with respect to osteoporosis  
 12 detection or prevention.

13 “(2) CONSTRUCTION.—Section 731(a)(1) shall  
 14 not be construed as superseding a State law de-  
 15 scribed in paragraph (1).”.

16 (B) Section 731(c) of such Act (29 U.S.C.  
 17 1191(c)) is amended by striking “section 711”  
 18 and inserting “sections 711 and 715”.

19 (C) Section 732(a) of such Act (29 U.S.C.  
 20 1191a(a)) is amended by striking “section 711”  
 21 and inserting “sections 711 and 715”.

22 (D) The table of contents in section 1 of  
 23 such Act is amended by inserting after the item  
 24 relating to section 714 the following new item:

“715. Standards relating to benefits for bone mass measurement.”.

1 (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B  
2 of title XXVII of the Public Health Service Act is amend-  
3 ed by inserting after section 2753 the following new sec-  
4 tion:

5 **“SEC. 2754. STANDARDS RELATING TO BENEFITS FOR BONE**  
6 **MASS MEASUREMENT.**

7 “(a) IN GENERAL.—The provisions of section 2708  
8 (other than subsection (g)) shall apply to health insurance  
9 coverage offered by a health insurance issuer in the indi-  
10 vidual market in the same manner as it applies to health  
11 insurance coverage offered by a health insurance issuer  
12 in connection with a group health plan in the small or  
13 large group market.

14 “(b) NOTICE.—A health insurance issuer under this  
15 part shall comply with the notice requirement under sec-  
16 tion 715(g) of the Employee Retirement Income Security  
17 Act of 1974 with respect to the requirements referred to  
18 in subsection (a) as if such section applied to such issuer  
19 and such issuer were a group health plan.

20 “(c) PREEMPTION.—

21 “(1) IN GENERAL.—The provisions of this sec-  
22 tion do not preempt State law relating to health in-  
23 surance coverage to the extent such State law pro-  
24 vides greater benefits with respect to osteoporosis  
25 detection or prevention.

1           “(2) CONSTRUCTION.—Section 2762(a) shall  
2       not be construed as superseding a State law de-  
3       scribed in paragraph (1).”.

4       (2) Section 2762(b)(2) of such Act (42 U.S.C.  
5       300gg-62(b)(2)) is amended by striking “section 2751”  
6       and inserting “sections 2751 and 2754”.

7       (c) EFFECTIVE DATES.—(1) The amendments made  
8       by subsection (a) shall apply with respect to group health  
9       plans for plan years beginning on or after January 1,  
10      2010.

11      (2) The amendments made by subsection (b) shall  
12      apply with respect to health insurance coverage offered,  
13      sold, issued, renewed, in effect, or operated in the indi-  
14      vidual market on or after such date.

○